



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.9.2006  
COM(2006) 516 final

2004/0047 (COD)

**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to the second subparagraph of Article 251 (2) of the EC Treaty**

**concerning the**

**common position of the Council on the adoption of a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways and Council Directive 2001/14/EC of the European Parliament and of the Council on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification**

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**1. BACKGROUND**

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| Date of transmission of the proposal to the EP and the Council (document COM(2004) 0139 final – 2004/0047 COD): | 4 March 2004      |
| Date of the opinion of the European Economic and Social Committee:  | 9 February 2005   |
| Date of the opinion of the European Parliament, first reading:  | 28 September 2005 |
| Date of adoption of the common position:  | 24 July 2006      |

**2. OBJECTIVE OF THE COMMISSION PROPOSAL**

With this proposal and in line with the White Paper 'European transport policy for 2010: time to decide', the Commission intends continuing the reform of the rail sector by **opening the international transport of passengers within the European Union to competition**.

This is one of the four measures the Commission proposed in the context of the **third railway package** (the other measures are intended to improve the rights of passengers using international services, to establish a certification system for train drivers and to improve the quality of rail freight services).

This particular proposal provides that as from 1 January 2010, railway undertakings, which have a licence and the required safety certificates, should have access to the infrastructure to operate international passenger services in the Community.

In order to create realistic economic conditions to develop the services, it is proposed that operators be permitted to pick up and set down passengers at any station on an international route, including at stations located in the same Member State. This has been organised in such a way as to safeguard the economic equilibrium of public service contracts which could be

affected by this, while at the same time not placing exaggerated constraints on the operating conditions of railway undertakings operating international open access rail passenger services.

### 3. COMMENTS ON THE COMMON POSITION

A central issue of the Council's discussions on the Commission's market opening proposal was its relation with the revised proposal on public passenger transport services by rail and by road<sup>1</sup>. Consequently, at the Council meeting of 5 December 2005, a Political Agreement on the Rail Market Access proposal could only be reached by addressing the relation between both proposals and giving guidance to several elements of the Public passenger transport services proposal in a Statement to the minutes made by the Council and the Commission (see Annex I).

The Council, by qualified majority (abstention by Hungary), made some general changes relative to the Commission's proposal that are acceptable because they would ensure its aims were met.

The first concerns the **rights to openly access the infrastructure for rail passenger services**. The Council retained the opening date of 2010 for international rail passenger services as proposed by the Commission. The Common Position delays the opening for Member States where international transport forms an important share of total rail passenger services until 2012. The Council hence refused the proposals of the European Parliament of its first reading to anticipate the opening date for international services to 2008 and to open up domestic services by 2012. The Council, however, took over the Parliament's proposal of a reciprocity clause that Member States could apply which would open their market before 2010. The Commission supports this opening schedule as defined in the Common Position as it allows all market actors to prepare for market opening. The Commission can accept this reciprocity clause since it is strictly transitional in nature and formulated in such a way as to avoid incompatibility with Community law. The Commission also agrees with the Common Position that the right of access should only be granted to those international services, which have as a principal purpose the carriage of passengers between stations located in different Member States. In this manner, it is avoided that an access right for international passenger services, which includes cabotage, could be abused leading to the opening of the market for domestic passenger services.

Second, in its Common Position the Council defines more clearly **the mechanisms and procedures to safeguard public transport services**. The Council retains the general principle proposed by the Commission that the right of access can only be limited if it would compromise the economic equilibrium of a public transport service. The Council has added three elements to the Commission proposal: a) a transparent procedure in which an independent regulatory bodies plays the key role for determining whether opening the market for international rail passenger services compromises a public transport service; b) a clarification on the modalities for granting or limiting the access right; and c) a provision which allows Member States to charge a levy on international rail passenger services in a transparent and non-discriminatory way to finance public rail passenger services. The Commission agrees with these additional elements as they either enhance the clarity of the provisions or state what is possible under Community law anyway.

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<sup>1</sup> The Commission issued a revised proposal on 20 July 2005, see COM(2005)319.

The third change takes up a suggestion of the European Parliament to **complement the opening of the market for international rail passenger services, and in particular for services using specialised infrastructure, with arrangements for more stable and predictable climate for investments**. Where the Parliament proposed to allow for services using specialised infrastructure, which requires substantial and long-term investment, framework agreements with durations of 10 years, the Council considers that a 15 years' duration would be more appropriate. The Commission supports the position of the Council which reflects appropriately the generally long amortisation periods for such specialised rail infrastructure.

Finally, the Council Common Position introduces a number of other significant changes compared to the Commission's proposal. It **clarified** that the Directive is to open the market for international rail passenger services within the Community and that transport services of goods and passengers, which begin and end in third countries and which transit Community territory, are not included within **the scope of the proposal**. Furthermore, the Common Position allows Member States for a **transitory period not to provide full open access to international rail passenger services** in cases where the right to use certain rail lines, for instance, in the case of a concession has been attributed based on an open and competitive tender procedure. The Council also proposed that Member States which do not have a railway system such as **Malta and Cyprus** would be exempt from the obligation to implement the Directives that are subject of this amendment. The Commission can agree to all these additional provisions.

#### 4 COMMISSION DETAILED COMMENTS

The Commission accepted wholly or in part four out of the twelve amendments proposed by the European Parliament at its first reading. Of these, the Council has included eight, either literally or in principle, in its common position.

##### 4.1 EP amendments accepted by the Commission and incorporated in full or in part in the common position

The references below are to recitals and articles of the common position.

Amendments 5 and 13. Taking up a suggestion from the European Parliament the Council proposes in Article 2 4) to extend the standard period for a framework agreement in the case of a specialised infrastructure to 15 years compared to 10 years proposed by the European Parliament. The Council also lists in an indicative manner the capacity characteristics which are to be provided to the applicant for the duration of the framework agreement.

Amendments 7 Recital 21 recommends to amend both, Directives 91/440/EEC and Directive 2001/14/EC.

Amendment 10. Recital 10 and Paragraph 1 8) 3b state that an open access right can only be limited in the case that the regulatory body would conclude based on a thorough economic analysis and pre-determined criteria that the open access right would compromise the economic equilibrium of the public transport service. The Common Position furthermore lists the actors who can request such an economic analysis and indicates procedural aspects of the assessment as well as the issuing of the decision.

#### **4.2 EP amendments rejected by the Commission and not incorporated in the common position**

Amendments 2, 8 and 9. Recital 6 and paragraph 1 8) 3a stipulate the appropriate date of opening the market for international rail passenger services is on 1 January 2010. This is contrary to the position of the European Parliament which proposed to open the market for international rail passenger services by 2008 and for domestic services by 2012.

Amendment 4. The amendment establishes a link to the reading by Council of the Commission proposal for a regulation of the European Parliament and of the Council on public passengers transport services by rail and by road. Establishing such a link is obsolete as the Council reached a political agreement on this proposal on 9 June 2006.

#### **4.3 EP amendments rejected by the Commission and incorporated fully or partly in the common position**

Amendments 6 and 12. Recital 17, paragraphs 1 9) and 1 10) require the Commission to report in 2009 on the implementation of Directive 91/440/EEC as amended by Directive 2001/12/EC as well as two years of the opening date for international rail passenger services on the implementation of this Directive. The Parliament's amendments require the Commission to report twice on the implementation of this Directive, first two years after the opening date for international passenger services as proposed by the European Parliament and secondly two years after the proposed opening date for domestic passenger services.

Amendments 3 and 11. Taking up a similar proposal of the European Parliament recital 11 and paragraph 1 8) 3d do not require Member States which have opened their market for international rail passenger services to grant access rights before the opening date foreseen by Community legislation to railway undertakings or their directly or indirectly controlled subsidiaries licensed in a Member State where access rights of a similar nature are not granted.

The Commission can accept these modifications which it had rejected in first reading of the EP.

## **5. CONCLUSION**

The Commission considers that the Common Position adopted on 24 July 2006 by qualified majority does not undermine the essential objectives and the underlying approach of its proposal, and can therefore support it.

## ANNEX I

### **Statement of the Council and the Commission for inclusion in the minutes of the Council**

In reaching a political agreement on a common position on the Directive amending Council Directive 91/440/EEC on the development of the Community's railways, the Council also agrees the following points.

1. The opening of the railway market in the Community can only be achieved step by step and in conformity with the demands of a public service.
2. This means that, for passenger transport, the opening of the market through the current legislative proposals only concerns international rail passenger services, including cabotage, and not domestic passenger services.
3. The future regulation on public passenger transport by rail and road, the main aim of which is to establish the legal framework for compensation of public service contracts, rather than the opening of the market for railway services, should permit direct award of public service contracts for railway services; and that such direct award should not require any further opening of the market rail passenger services beyond what has been agreed in the Directive amending Directive 91/440.
4. Similarly, maintaining the possibility for public authorities to provide for the operation of integrated rail networks is an issue of importance for the Council which notes that this may require the PSO Regulation to provide for the direct award of contracts for such networks.
5. It will be necessary to ensure coherence between the Directive amending Directive 91/440 and the PSO Regulation in the framework of future discussions on the Regulation, in order to provide greater legal clarity.
6. The issues that will need to be clarified in reaching agreement on the PSO Regulation include, in particular:
  - the definition of long distance, urban and regional railway transport, in line with the principle of subsidiarity, because of the specific circumstances of different competent authorities
  - determining the responsibility for financing international public services contracts;
  - the scale of investment in the calculation of the length of public service contracts.
7. The Council commits itself to try to find a political agreement on the PSO Regulation as soon as possible in 2006. Significant progress needs to be achieved in the coming six months, paying particular attention to the general principles of transparency, subsidiarity and legal clarity.